

BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Complaint on First-Class Mail  
Service Standards

Docket No. C2001-3

MOTION OF THE UNITED STATES POSTAL SERVICE  
TO DISMISS COMPLAINT  
(July 30, 2001)

The Postal Rate Commission is authorized under section 3662 of the Postal Reorganization Act (39 U.S.C. § 101 *et seq.*) to consider complaints which raise questions concerning whether postal services are being provided in accordance with the policies of the Act. In accordance with the Rules of Practice and Procedure of the Postal Rate Commission which implement section 3662,<sup>1</sup> and for the reasons stated below, the United States Postal Service hereby moves that the June 19, 2001, Complaint of Douglas Carlson in the above-captioned proceeding be dismissed.

The Postal Service is chartered with the responsibility of providing prompt, reliable, and efficient services. 39 U.S.C. § 101(a). It is authorized by 39 U.S.C. § 403(a) to plan, develop, promote, and provide adequate and efficient service () and by subsection 403(b)(1) to maintain an efficient system of collecting, sorting, and delivery of mail nationwide. The Postal Service is required to provide for the collection, handling, and transportation mail. 39 U.S.C. § 404(a)(1). Section 3661(a) of the Act repeats the requirement that the Postal Service develop and promote adequate and efficient services. While 39 U.S.C. § 101(a) requires the provision of basic and fundamental service to patrons in all areas and communities, the Act recognizes that rigidly uniform service between all mail origins and destinations is not practicable and

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<sup>1</sup> 39 C.F.R. § 3001.81 through 3001.87.

permits a reasonable degree of variation in the provision of any given service to putatively similarly-situated customers. In this vein, the Act directs the Postal Service to provide service in a manner that avoids undue or unreasonable discrimination among users of the mails. 39 U.S.C. § 403(c).

Generally, the Complaint raises two categories of issues under section 3662. The first category relates to section 3661 of the Act and whether the Postal Service, by implementing changes in 2000 and 2001 to the service standards for First-Class Mail traveling between numerous 3-digit ZIP Code area origin-destination pairs, has made a change in the nature of First-Class Mail service on a nationwide or substantially nationwide basis without first submitting a request for an advisory opinion from the Commission under section 3661(b) regarding such change.

Second, irrespective of the application of section 3661(b), the Complaint alleges that the service standard changes result in the provision of First-Class Mail service that is not in accordance with various policies of the Act. The Complaint asserts that the resulting service is not "adequate" within the meaning of sections 403(a) and 3661(a). It claims that the changes result in "undue or unreasonable discrimination among users of the mails," within the meaning of section 403(c).<sup>2</sup> Finally, the Complaint claims that the changes in service "may be arbitrary."

There is no dispute that the alleged First-Class Mail service standard changes described in the Complaint were implemented. However, as the Postal Service will demonstrate below, the Commission should not exercise jurisdiction to hear the various allegations raised in the Complaint. There is no basis for concluding that the First-

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<sup>2</sup> The Complaint also asserts that the change results in First-Class Mail service that is not consistent either with postal management objectives expressed a decade ago in Docket No. N89-1 or with a description of First-Class Mail service standards published by the Postal Service in its *2001 National Post Office and ZIP Code Directory*.

Class Mail service standard changes at issue were implemented in a manner contrary to section 3661. The Postal Service also will prove that none of the specific service standard changes complained about result in First-Class Mail service that violates any of the policies of the Postal Reorganization Act. Moreover, a number of the specific allegations in the complaint do not raise issues regarding service on a nationwide or substantially nationwide basis. Accordingly, the Complaint should be dismissed.<sup>3</sup>

I. The Complaint Regarding Section 3661(b) Is Based Upon A Mistaken Assumption

In pertinent part, 39 U.S.C. § 3662 provides that:

Interested parties . . . who believe that they are not receiving postal service in accordance with the policies of . . . title [39, United States Code] may lodge a complaint with the Postal Rate Commission in such form and in such manner as it shall prescribe. The Commission may in its discretion hold hearings on such complaint. . . . If . . . the Commission after hearing finds the complaint to be justified, it shall render a public report thereon to the Postal Service which shall take such action as it deems appropriate.

Section 3661(b) states that:

When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Rate Commission requesting an advisory opinion on the change.

The Commission has opined that :

To the extent that the § 3662 complaint mechanism has been viewed as a remedial supplement to the review of substantially nationwide service changes required under § 3661, consideration of a Postal Service action purportedly in violation of § 3661 in a complaint proceeding appears compatible with the statutory scheme of the Reorganization Act.

PRC Order No. 1239 at 14 (footnote omitted) (May 3, 1999). When reduced to their

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<sup>3</sup> Henceforth, unless otherwise specified, any references to mail or to postal service below will pertain to First-Class Mail and all references to service standards will pertain to the standards for that mail class.

essence, a number of the 65 enumerated paragraphs of the Complaint<sup>4</sup> form an general allegation that, in the years 2000 and 2001, on a substantially nationwide basis, the Postal Service implemented a plan under which it changed the First-Class Mail service standards for 76,443 3-digit ZIP Code area origin-destination pairs, without first submitting a request for an advisory opinion on that plan under the terms of section 3661(b).

At first glance, the core assumption underlying this aspect of the Complaint does not appear altogether unreasonable. However, it is altogether wrong. The attached Declaration of Charles M. Gannon (hereinafter, the Gannon Declaration) demonstrates that the changes to First-Class Mail 2-day and 3-day service standards implemented in 2000 and this year constitute the completion of the First-Class Mail service standard realignment plan that the Postal Service submitted to the Commission for review in Docket No. N89-1, consistent with the requirements of section 3661. Thus, the allegation that the recently implemented changes are part of a plan that has not been submitted for review under section 3661(b) is based upon a misunderstanding about the relationship between these recent changes and the Docket No. N89-1 realignment plan.

To understand this relationship, the Commission should look beyond the mistaken assumptions underlying the Complaint and examine the service standard changes contemplated by the Docket No. N89-1 realignment plan and the Gannon Declaration. When viewed in the context of the explanation provided by Mr. Gannon, it becomes clear that the recently implemented changes are the belated completion of the comprehensive plan first presented and reviewed nearly a dozen years ago. The Gannon Declaration candidly recapitulates (1) the failure to conduct a timely finalization

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<sup>4</sup> Particularly paragraphs 10 through 14, 18, 19, 44 through 48, and 59.

review of the initial implementation of Phase 2 of the realignment plan reviewed in Docket No. N89-1; (2) the interruption in pursuit of that objective caused by internal management reorganization and competing priorities; (3) the discovery, when that review was finally undertaken, that decentralization of some mail processing and transportation decision-making authority in the early-to-mid 1990s resulted in less discipline and coordination in mail dispatch among mail processing plants, undermining achievement of any service standards; (4) the discovery that the initial implementation of Phase 2 did not anticipate the impact of declining reliability of air transportation to achieve 2-day service standards for First-Class Mail, or sufficiently incorporate opportunities to utilize surface transportation to achieve more consistent 2-day service transfer, or result in the development of more logical, contiguous 2-day service standard zones, as had been expected when the realignment plan was developed, (5) the development and imposition of mail processing and dispatch requirements designed to address the failure of the initial implementation of Phase 2 to achieve the realignment plan's objectives, and (5) implementation of the service standard changes in 2000 and this year that "cleaned up" and completed the implementation of Phase 2 of the realignment plan.

The Postal Service submits that a thoughtful review of the material and relevant facts, particularly those presented in the Gannon Declaration, leads to the inescapable conclusion that the instant Complaint should be summarily dismissed, because it is based upon a fatally mistaken apprehension about the genesis and nature of the recently implemented changes to First-Class Mail service standards.

A. Some History Is In Order

As a necessary predicate to explaining the connection between the recently implemented service standard changes and the Docket No. N89-1 realignment plan from which they arose, the Postal Service will summarize that plan and the

Commission's review of it.

On September 29, 1989, consistent with section 3661(b),<sup>5</sup> the Postal Service requested an advisory opinion from the Commission in relation to a plan to realign First-Class Mail service standards. The Postal Service's general objective was to realign the destination areas covered by the overnight, 2-day, and 3-day delivery standards to more closely conform to customer need. Customer need was determined primarily on the basis of market research which, in the view of the Postal Service, "show[ed] that the geographic areas in which . . . [postal] customers need overnight and two-day delivery of First-Class Mail are generally smaller than the areas currently targeted by the Postal Service for such delivery." Docket No. N89-1, USPS Request at 3. The realignment plan was based upon the conclusion that "within certain limits, consistency of First-Class Mail delivery is of greater importance to today's postal customers than speed of delivery."<sup>6</sup> The results of the market research were presented in the Docket No. N89-1 testimony of Postal Service witness Seymour Lazerowitz, who described the process by which the Postal Service anticipated it would determine what changes to make. Witness Lazerowitz also explained that the market research was used in developing guidelines (attached to the Request) to be used in realigning delivery commitments to more closely conform to customer need.<sup>7</sup>

The testimony of Postal Service witness John Potter explained such matters as the history of the development of the then-existing First-Class Mail service standards,

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<sup>5</sup> But without addressing the applicability of that section. Docket No. N89-1, USPS Request at 2, n.2.

<sup>6</sup> See Docket No. N89-1, Request Of United States Postal Service For An Advisory Opinion On a Change In First-Class Mail Delivery Standards, at 3.

<sup>7</sup> See, *generally*, Docket No. N89-1, Testimony of Seymour A. Lazerowitz On Behalf Of The United States Postal Service, USPS-T-1.

why the Postal Service planned to realign them, the nature and scope of the proposed changes, and the schedule and manner by which the Postal Service anticipated it would execute the realignment.<sup>8</sup>

Finally, the testimony of Postal Service witness George Shipman explained the manner in which air and ground transportation were employed to move First-Class Mail at the time. He also explained how and why the proposed realignment plan could be expected to result in reliance on the use of more surface transportation to transmit First-Class Mail when the proposed 2-day service standards were implemented.<sup>9</sup>

Pertinent to the issues raised in the instant Complaint, it should be emphasized that, as part of the realignment plan, the Postal Service intended to change the definition of the First-Class Mail 2-day service standard for each 3-digit ZIP Code area point of origin from:

[a] 600 mile radius [from the origin Sectional Center Facility (SCF)] using surface transportation and some other areas beyond 600 miles through use of air transportation

to:

all areas dropped out of 1-day areas by this proposal, plus all SCFs within home State and nearby States within reasonable reach of surface transportation, plus areas outside reach of surface transportation if significant business/volume relationships exist and if dependable and timely air transportation is available.

Docket No. N89-1, USPS-T-2, at 6-7 and Appendix A at 7-8.

The clear intent of the plan was to permit numerous changes in the service standards (1-day, 2-day, or 3-day) among the numerous (now 849,106) 3-digit ZIP Code area origin-destination pairs. Generally, the plan was intended to be rolled out in

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<sup>8</sup> See, generally, Docket No. N89-1, Testimony of John E. Potter On Behalf Of The United States Postal Service, USPS-T-2.

<sup>9</sup> See, generally, Docket No. N89-1, Testimony of George A. Shipman On Behalf Of The United States Postal Service, USPS-T-3.

two phases. In Phase 1, the changes from 1-day to 2-day service (or *vice versa*) would be completed. Then, in Phase 2, the changes from 2-day and 3-day service (or *vice versa*) would be implemented.<sup>10</sup>

Pursuant to its rules, the Commission issued a public notice regarding the request and offered interested parties an opportunity for a hearing on the record.<sup>11</sup> Twenty-eight parties intervened in the case. Discovery and motion practice were robust. The Commission conducted hearings for testimony from postal and intervenor witnesses. An extensive evidentiary record was developed, legal briefs were filed, and the Commission issued an advisory opinion on July 25, 1990.<sup>12</sup>

In that Opinion, the Commission advised the Postal Service not to implement the planned changes. The Commission considered the market research upon which the Postal Service's plans were based to be inadequate. The Commission did not consider that the research measured customer support for the proposed realignment and concluded that the research was technically flawed. PRC Op. N89-1 at 2. The Commission also faulted the Postal Service for not developing estimates of the cost impact of the proposed realignment on its own operations and on its customers. *Id.* Otherwise, however, in reference to areas where existing service standards could not reasonably be met, the Commission concluded that adjusting standards, or the boundaries in which respective standards applied, was appropriate. It advised that adjustments at certain SCFs to correct specific anomalies, illogical service standards, and inefficient service standards should go forward without a nationwide realignment of service standards. *Id.* at 2, 41. The Commission further advised that the Postal Service

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<sup>10</sup> Docket No. N89-1, USPS-T-2, Appendix A at 29.

<sup>11</sup> PRC Order No. 848; 54 Fed Reg 41530 (October 10, 1989).

<sup>12</sup> See, Docket No. N89-1, Advisory Opinion Concerning A Proposed Change In The Nature of Postal Services, (July 25, 1990).



would do better to modify service standards on an "as and where needed" basis, and then to evaluate the results in the context of the desirability of more widespread change. *Id.* at 41.

Notwithstanding the less encouraging aspects of the Commission's Docket No. N89-1 advisory opinion, the Postal Service elected to pursue implementation of the service standard changes described in its realignment plan. The Postal Service's decision was not inconsistent with the statutory scheme. As the Commission has recently affirmed:

Section 3662 acts to limit the authority of the Commission to rendering a public report to the Postal Service on its findings. Further it allows the Postal Service the discretion to take such action as it deems appropriate on the findings in the public report.

PRC Order No. 1307 at 16 (March 20, 2001).

**B. Even The Best Laid Implementation Plans Can Encounter  
Unforeseeable Interruptions**

When the Docket No. N89-1 request was filed, it was the intention of the Postal Service to conduct a phased implementation of changes to First-Class Mail delivery standards from February 10 through September 30, 1990. Docket No. N89-1, USPS-T-2, App. A at 29.<sup>13</sup> During the litigation of the case, the Postal Service elected to delay the start of implementation of Phase 1 until June 30, 1990. Then, the start was postponed until no earlier than July 28, 1990. PRC Op. N89-1 at 2.

The path to completion of implementation was not as smooth as anticipated. Implementation of Phase 1 of the plan proceeded eventually as expected. Changes were made between overnight and 2-day service standards and then checked against the objectives of the realignment plan. As necessary, adjustments and corrections

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<sup>13</sup> Phase 1 was to consist of changes to overnight service standards; Phase 2 was to consist of changes to 2-day and 3-day service standards.

were made as a part of this review process before it could be determined that the implementation met the objectives of the plan. Mail processing and dispatch changes were made in anticipation of Phase 2. Then implementation of the Phase 2 service standard changes (between 2-day and 3-day service standards) took place. However, unlike with Phase 1, there was no comprehensive follow-up analysis of whether the numerous changes implemented were consistent with the objectives of the realignment plan, whether they were logical, achieved efficiencies, or reduced anomalies, as had been the case after the initial implementation of Phase 1. Gannon Declaration at ¶¶ 6, 13.

As further explained in the Gannon Declaration, a combination factors -- management reorganizations and competing priorities -- further delayed the finalization of Phase 2. And, when the long-overdue review was finally undertaken, it led to the conclusion that there had been an insufficient incorporation of available surface transportation in revising 2-day service standards, and the intervening delegation of mail processing and dispatch decision-making to the field, and the decline in reliability of air service to meet 2-day service standards, had worked against the achievement of any service standards. The necessary mail processing and transportation improvement programs were developed and executed in 1998 and 1999. Then-existing 2-day and 3-day service standards were re-examined in light of the goals of the realignment plan and the aforementioned operational adjustments. Where deemed appropriate, 2-day and 3-day service standard changes considered consistent with the objectives of the realignment plan were implemented in 2000 and 2001, completing Phase 2. Gannon Declaration at ¶¶ 15-18. During the years between the initial implementation of Phase 2 and the recent finalization, problems with commercial air performance necessitated that the Postal Service more costly "dedicated" air transportation to move mail between certain Pacific, Western, and Southwestern cities. Gannon Declaration at ¶ 12.

No one in or out of the Postal Service predicted in 1990 the intervening circumstances that would cause the Postal Service to lose, then re-gain momentum in its implementation of Phase 2 of the realignment plan, or that it would take as long as it did to complete. Had all proceeded according to plan in the early 1990s, the nexus between the realignment plan and the changes that completed the implementation of Phase 2 would probably have been obvious. In the absence of any clear indication to the contrary, the instant Complaint assumes that the recently implemented service standard changes originated outside the scope of the Docket No. N89-1 realignment plan. However, at ¶¶4-13, the Gannon Declaration proves the Complaint to be mistaken on this point. Accordingly, insofar as the Complaint alleges a violation of section 3662 because of a supposed failure of the Postal Service to request an advisory opinion under section 3661(b) before implementing the changes at issue here, the Complaint should be summarily dismissed.

C. The Public Was Heard In Docket No. N89-1

At ¶45, the Complaint alleges that in implementing the recent service standard changes, the Postal Service omitted an essential step in the planning, development, promotion and provision of adequate and efficient postal services. In a related vein, the Complaint also alleges that before implementing the recent changes, "the Postal Service deprived itself of the intelligence that it might have gained from a public proceeding and a Commission advisory opinion, and . . . deprived the public of an opportunity to provide its views." Complaint at ¶46. Both of these allegations are based on the same misunderstanding about the relationship between the recent changes and the Docket No. N89-1 realignment plan.

The recent service standard changes were contemplated by and within the scope of the original realignment plan. And, as the record in Docket No. N89-1 makes clear, the public was afforded a hearing on that plan. Therefore, contrary to the

allegations in the Complaint, the Postal Service has not omitted an essential step in the implementation of the recent changes, has not deprived itself of any intelligence, or deprived the public of an opportunity to provide its views. The Docket No. N89-1 record provides volumes of material to refute this aspect of the Complaint.

The passage of time since Docket No. N89-1, and the absence of any fanfare associated with the finalization of Phase 2 of the realignment plan, likely contributed to the Complaint's failure to recognize the connection between those changes and the realignment plan from which they originated. However, the fact that these changes may have been slow in coming does not make their implementation a violation of sections 3661 or 3662.

In what seems to be a related grievance at ¶47, the Complaint asserts that "the criteria and process . . . employed to change . . . service standards in 2000 and 2001 did not ensure . . . that the Postal Service would obtain sufficient public input" before implementing the changes. This allegation, too, suffers from a failure to recognize the link between the recent changes and the Docket No. N89-1 realignment plan. The allegation also fails to recognize the limits on the Commission's section 3661(c) authority. When it subjected its realignment plan to scrutiny in that docket, the Postal Service fulfilled any obligation it might have had to ensure an opportunity for review of its plan, and for the receipt of "sufficient" public input. In the absence of any material change to its Docket No. N89-1 service standard change goals and objectives, the Postal Service has no obligation to submit Phase 2 of its Docket No. N89-1 plan to a second section 3661(c) review to allow further opportunity for public input, even if there has been a lapse of time between the implementation of Phase 1 and the completion of Phase 2.

The allegation in ¶47 of the Complaint also seems to be based upon a misreading of the criteria and process the Postal Service said it would and did employ

in executing Phase 1 and the first pass at Phase 2 of the realignment plan. The Docket No. N89-1 testimony of witness Lazerowitz (USPS-T-1 at 22-23) explained how public input obtained through market research already had influenced the development of the guidelines under which service standards were to be established. His testimony further explained the circumstances under which further public input might be solicited and examined. It is undisputed that the Commission's Docket No. N89-1 Opinion criticized the quality of the market research on which the Postal Service relied and the conclusions drawn from that research. The Complaint seems to imply that the Commission's criticism renders legally defective any reliance on that market research by the Postal Service in realigning service standards and requires the completion of additional research. If that is a faithful reading of the Complaint, then the Postal Service considers that the Complaint misapprehends the reach of the Commission's Docket No. N89-1 authority under section 3661(c). Having fulfilled its obligation under section 3661(b) to request an advisory opinion in Docket No. N89-1, the Postal Service had the discretion to implement its plan, notwithstanding the less encouraging aspects of the Commission's advisory opinion regarding the use of market research.

D. The Shift From Air To Surface Transportation For 2-Day Mail Was Part Of The Plan Reviewed By The Commission

In ¶36, the Complaint characterizes the recent finalization of the Phase 2 service standard changes as being motivated by the goal of minimizing the use of air transportation to move First-Class Mail with a 2-day service standard, and alleges that this goal "represents a change in the nature of" First-Class Mail service within the meaning of section 3662. As with the preceding allegations above, this claim is founded on a failure to appreciate the relationship between the recently implemented changes and the realignment plan reviewed in Docket No. N89-1.

The Commission will recall that "air to surface diversions" were always an integral aspect of the changes in 2-day service commitments. See Docket No. N89-1, USPS-T-2, Appendix A at 29; *also* USPS-T-3. These more recent diversions were implemented as prerequisites to the finalization of the Phase 2 changes in 2-day and 3-day service standards, consistent with the original Docket No. N89-1 plan. Gannon Declaration at ¶¶15-17. Therefore, any change in the nature of First-Class Mail service, as is alleged in ¶36 of the Complaint, occurred a decade ago, when the Postal Service began to implement the plan it submitted for review in that proceeding, consistent with section 3661(b). The recent shift toward more reliance on surface transportation for 2-day First-Class Mail in the finalization of Phase 2 of the realignment plan is simply the execution of a service change reviewed under section 3661(c) in Docket No. N89-1. Accordingly, the allegation in ¶36 of the Complaint also should be summarily dismissed.

II. The Complaint Seeks To Expand The Commission's Section 3661 And 3662 Jurisdiction Beyond Reasonable Limits

Having demonstrated that the recently implemented service standard changes merely complete the realignment plan subjected to review in Docket No. N89-1, the Postal Service now discusses the various other alleged violations of section 3662 and explains why the Commission should not assert jurisdiction to hear them.

A. The Alleged Deviation From The ZIP Code Directory Does Not Give Rise To A Complaint Under Section 3662

Section 9 of the *2001 National Post Office and ZIP Code Directory* published by the Postal Service contains an abridged description of domestic mail services. The description is brief, and in fact, begins on page 9-2 with the following caution:

The following is a general summary of domestic classes of mail and services offered by the United States Postal Service. It is not intended to be complete.

Page 9-3 of the 2001 ZIP Code Directory contains seven sentences (divided into two paragraphs) that very generally describe First-Class Mail. One of those sentences

reads as follows:

Second-day delivery is scheduled for locally designated areas nationwide to which 2-day delivery is needed and to which transportation is available for consistent achievement of 2-day delivery.

Paragraphs 16 through 19 of the Complaint allege that the First-Class Mail service standard changes at issue in this proceeding represent "a change in, departure from, or abandonment of the criteria the Postal Service announced in the 2001 ZIP Code Directory for two-day First-Class Mail service standards" for which the Postal Service was required to request an advisory opinion under 3661(b) before implementing.

First, the Postal Service rejects the notion that the recently implemented service standard changes represent "a change in, departure from, or abandonment of" the description of the 2-day service standard in the ZIP Code Directory. The description in the ZIP Code Directory is nothing more than an abridgement of the 2-day service standard reviewed in Docket No. N89-1 and adopted thereafter. See, Docket No. N89-1, USPS-T-2, Appendix A at 7-8. Accordingly, on that basis alone, this aspect of the Complaint should be summarily dismissed.

Alternatively, the Postal Service respectfully submits that these paragraphs of the Complaint do not state a claim under section 3662, because that section requires that a complaint allege a violation of a statutory policy embodied in title 39, United States Code. Page 9-3 of the 2001 ZIP Code Directory is not a statutory policy of the Act, within the meaning of section 3662. As an adjunct to its principal function -- providing post office and ZIP Code information -- the directory contains cursory information about domestic mail services, explicitly directing the reader to other sources for more information.

Even though the description of the First-Class Mail 2-day service standard on page 9-3 of the ZIP Code Directory is abridged, the Postal Service considers that nothing in that sentence is inconsistent with the wording from Docket No. N89-1, USPS-T-2, Appendix A at 7-8. And, since the 2-day service standard definition reviewed in Docket No. N89-1 served as a guidepost in the implementation of the recently *implemented service standard changes*, there is no basis for the Complaint to assert that these changes are inconsistent with the abridged description of the 2-day service standard definition contained in the ZIP Code Directory.

Even if it were assumed that the Commission concluded that there was some material inconsistency between the ZIP Code Directory description of the 2-day service standard and the definition which served as the basis for implementation of the recent changes that triggered the Complaint in this proceeding, the Complaint would still not establish a basis to proceed under section 3662. Consistent with ¶¶16-19 of the Complaint, the Complainant would apparently expect the Commission to assert jurisdiction under section 3662 to conduct hearings for the purpose of exploring whether the recent service standard changes were consistent with the ZIP Code Directory description of 2-day service. Or, alternatively, the hearings would serve the function of exploring wording that might "bridge the gap" between the ZIP Code Directory description of 2-day First-Class Mail service and the Docket No. N89-1 description upon which the recent changes were based.

If the Commission does not dismiss this portion of the Complaint on the grounds advanced above, and finds there to be some material difference between the definition of 2-day service reviewed in Docket No. N89-1 and the description in the ZIP Code Directory, PRC Order No. 1307 (March 20, 2001), issued in Docket No. C2001-1, provides necessary guidance. There, the Commission dismissed a portion of a recent complaint which generally alleged that certain Postal Service holiday and Sunday mail



processing practices were either adopted in violation of section 3661(b), or resulted in the provision of service contrary to the policies of the Act, within the meaning of section 3662. That complaint also alleged that the practices violated the provisions of the Postal Operations Manual (POM). In response to this latter allegation, the Commission opined that:

failure to follow a provision of the POM is not *per se* conclusive in determining that the Postal Service has failed to follow a policy of the Act. There are provisions of the POM that may be very significant in relation to the policies of the Act. . . . A determination of a provision's significance requires a thorough examination of the specific POM provision, the specific policy requirement, and the surrounding facts of the specific case.

However, focusing on the POM, in this case, may do little more than highlight inconsistencies between a Postal Service document, and actual policy and practice. A more prudent focus would be on the sufficiency of the Postal Service's actual policies and practice.

Docket No. C2001-1, PRC Order No. 1307 at 14-15.

If necessary, the Commission should review the approach taken in Docket No. C2001-1 and consider the significance of the abridged ZIP Code Directory description of the 2-day service standard. The Commission should then examine the definition of the 2-day standard enunciated in Docket No. N89-1 and its relationship to the service standard changes at issue in this case. Next, the Commission should determine whether the purposes of section 3662 are served by the initiation of hearings to examine how the wording in the ZIP Code Directory -- which explicitly provides only a "general summary" that is "incomplete" -- could be changed. The Postal Service considers that the Commission should conclude that whether the recently implemented service standard changes are consistent with that summary description is not a question for which section 3662 was intended to provide a forum.

B. A Modification In Service Change Implementation Is Not A Change In The Nature Of A Postal Service

1. There has been no change, departure, or abandonment of the original 2-day service standard criteria.

Paragraphs 16-19 of the Complaint allege that the recently implemented changes “represent a change in, departure from, or abandonment of the criteria that the Postal Service announced in Docket No. N89-1 . . . for two-day First-Class Mail service standards” for which no advisory opinion has been requested under section 3661(b). In this regard, we acknowledge that the Postal Service’s implementation of Phase 2 of the Docket No. N89-1 realignment plan was protracted. However, the indisputable fact is that the 2000 and 2001 service standard are rooted in that realignment plan, contrary to any assertion that the changes represent a “change in” or a “departure from” or an “abandonment of” that plan.

The Complaint quotes a portion of the testimony of Postal Service Docket No. N89-1 witness Lazerowitz (USPS-T-2 at 22-23) and characterizes this portion of his testimony as explain[ing] the Postal Service’s criteria for two-day standards for First-Class Mail.” Complaint at ¶33. At ¶48, the Complaint alleges that the Postal Service:

departed from previous operating procedures, as described . . . in witness Lazerowitz’s [Docket No. N89-1] testimony, by failing to obtain sufficient public input before changing First-Class Mail service standards in 2000 and 2001.

From this, the Complaint leaps to the conclusion that the Commission should exercise jurisdiction to review the manner in which the changes were implemented. As will be demonstrated below, this conclusion is based upon confusion between a change in the nature of a postal service, within the meaning of section 3661(b), and a deviation in the plan for implementation of a such a change.

2. The realignment plan remains the same, even if the implementation process has been altered.

As explained in Docket No. N89-1, one of the goals of the Docket No. N89-1 service standard realignment program was to redefine the First-Class Mail 2-day service standard for each 3-digit ZIP Code area point of origin. The old standard was defined to include destination SCFs outside of the overnight service area, but within a 600 mile radius from the origin SCF using surface transportation, and some other areas beyond 600 miles through use of air transportation. The current 2-day service standard definition reviewed by the Commission in Docket No. N89-1 included all areas dropped out of 1-day areas by that realignment plan, plus all SCFs within the home State and nearby States within reasonable reach of surface transportation.<sup>14</sup>

Thus, after the changes to 1-day service areas were determined, the following criteria were to be evaluated in identifying 2-day delivery areas from a particular 3-digit ZIP Code area of origin:

- (1) is the destinating SCF area within reasonable reach of surface transportation to make 2-day service a reasonable goal?
- (2) even if not, do significant business/volume relationships exist to justify consideration for 2-day treatment anyway by considering air transportation?
- (3) even if such relationships exist, is air transportation sufficiently dependable and timely to justify designating that destinating area for 2-day treatment?<sup>15</sup>

As explained by the Gannon Declaration at ¶18, these criteria, in addition to the goal of improving consistency of transit time, were a dominant focus in finalizing the Phase 2

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<sup>14</sup> Plus areas outside reach of surface transportation if significant business/volume relationships exist, and if the Postal Service considers that there is dependable and timely air transportation available to reach them. *Compare*, Docket No. N89-1, USPS-T-2, at 6-7 and Appendix A at 7-8.

<sup>15</sup> If the second and third questions are answered in the negative, the destination is designated for 3-day service.

service standard changes in 2000 and 2001.

However, it is important not to lose sight of the fact that the testimony of witness Lazerowitz quoted in ¶33 of the Complaint did not describe the changes in the nature of First-Class Mail service that were to take place. Instead, referring to these same substantive criteria referenced above, witness Lazerowitz described the decision-making process that the Postal Service anticipated it would employ in implementing those changes. Even if it meant accomplishing it by means of a decision-making process that deviated to some degree from the process employed at the outset over a decade ago, the Postal Service has been determined to finish Phase 2 of the realignment. Gannon Declaration at ¶¶26-27.

The Postal Service acknowledges that not every aspect of the decision-making process employed to accomplish the Phase 2 service standard finalization conforms precisely to the process anticipated to be employed when these changes were contemplated over a decade ago. The postal management organizational structure has changed significantly from what it was in 1990. Tasks which were originally the responsibility of one part of the postal management structure, or one level in the chain of command, have been transferred to others. Some parts of the organization originally vested with certain implementation responsibilities no longer exist. In finalizing Phase 2, postal management applied the Baldrige Principles process as a self-evaluation tool. See Gannon Declaration at ¶13.

The Postal Service readily concedes that some of these features of the Phase 2 finalization process were never contemplated by its Docket No. N89-1 witnesses and that, consequently, finalization of Phase 2 does not mirror the implementation of Phase 1 or the initial pass at Phase 2. Nor does vesting the decision-making with the Service Management Policies and Programs office, which did not even exist in 1990, conform to original expectations. It was not contemplated in 1990 that much of the analysis

regarding which changes to consider could be accomplished by manipulation of data on a personal computer, instead of review of thousands of pages of paper generated by local postal officials. However, these are not changes in the nature of a postal service, within the meaning of section 3661(b). They are merely alterations in the internal postal management decision-making process regarding the implementation of changes in the nature of a postal service.

The Postal Service respectfully submits that section 3661(b) cannot reasonably be interpreted to require that it now request an advisory opinion on whether it may adjust the method of implementing a service standard realignment plan that already has been reviewed under section 3661(c) and implemented. The purpose of the Commission's section 3661(c) advisory review authority is to allow it to offer an opinion about a substantive "change in the nature of postal services" being contemplated by the Postal Service. Assuming it is at least substantially nationwide in scope, the "change" that the Commission is authorized to review must be in the nature of the actual "postal services" provided to the public in order for it to be subject to section 3661(c), not merely a modification in the manner by which postal management goes about determining which operational unit or method will be employed to execute such a change.

Likewise, once the section 3661(c) process has run its course, section 3662 does not extend Commission review to such questions as whether, for a postal service change previously reviewed under 3661(c), it is consistent with the policies of the Act for postal Headquarters to assume implementation responsibilities originally delegated to its Division or other local offices. Nor does the Postal Service consider section 3662 to authorize the Commission to review whether the Act allows one Headquarters department to take over implementation responsibilities originally assigned to another.

3. The criteria for change were reviewed in Docket No. N89-1 and have not been modified.

Paragraph 39 of the Complaint alleges that the "criteria and process . . . employed to change First-Class Mail service standards in 2000 and 2001 do not ensure that the revised standards will provide customers with adequate First-Class Mail service."<sup>16</sup> However, the criteria which serve as the basis for the service standards changed in 2000 and 2001 were reviewed in Docket No. N89-1. The Postal Service considers that it is untimely to seek review of whether the criteria examined in that proceeding and employed ever since "ensure that the revised service standards will provide customers with adequate . . . service."

In the context of the current Complaint, it is the view of the Postal Service that after a proposed service change deemed by the Commission to be substantially nationwide in scope is reviewed under section 3661(c), section 3662 might authorize the Commission to later analyze whether the resulting service conforms to the policies of the Act. However, the instant Complaint essentially requests that the Commission now review every aspect of the implementation of Phase 2 of the First-Class Mail service standard realignment plan and identify the parts of the implementation process that "do not ensure that the revised standards will provide customers with adequate First-Class Mail service."

At ¶48, the Complaint alleges that the Postal Service "departed from previous operating procedures, as described in witness Lazerowitz's [Docket No. N89-1] testimony, by failing to obtain sufficient public input before changing service standards in 2000 and 2001." Here again, the Complaint apparently alludes to the passage from

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<sup>16</sup> Section 3661(a) states that the Postal Service shall develop and promote "adequate" postal services. In paragraphs 20 and 22-32, the Complaint identifies some revised service standards as resulting in service that is not "adequate," within the meaning of that section.

the Docket No. N89-1 Lazerowitz testimony it cites and quotes in ¶¶33. At that quoted passage in his testimony, witness Lazerowitz described the process by which it was anticipated that the Postal Service would implement Phase 2 of the realignment plan. See Docket No. N89-1, USPS-T-1 at 23; *also*, USPS-T-2, Appendix A at 7-8. The Complaint does not allege how these procedures were violated. It simply asserts that whatever level of public input was solicited and obtained was not "sufficient." In this regard, the Complaint appears to assume that a certain level of solicitation of such input was mandatory in every case where a change from 2-day to 3-day service was being contemplated.

As conceded in the Gannon Declaration at ¶¶26-27, the Postal Service did not solicit mailer input a second time before making the 2000-2001 changes. The Postal Service's determination that air transportation had generally become a less reliable option for 2-day First-Class Mail over the years has influenced the determination to utilize ground transportation to move mail between various points more consistently, making it necessary to shift service standards accordingly among various origin-destination pairs. The fact is that the former 2-day service standard definition implied significant reliance on surface transportation. The current 2-day service standard definition implies a greater reliance on surface transportation. The Docket No. N89-1 realignment plan emphasizes "put[ting] transportation changes in place for air to surface diversions" as a critical element. See Docket No. N89-1, USPS-T-2, Appendix A at 29; *see also*, PRC Op. N89-1 at 11. In finalizing the Phase 2 service standard changes, the Postal Service was influenced by these considerations. While both the timing and the actual changes resulting from the finalization of Phase 2 may have caught some by surprise, this does not affect the legitimacy of the shift from air to ground contemplated in Docket No. N89-1 or require that there be hearings now for the purpose of re-examining this aspect of the realignment plan for the benefit of those who

did not intervene in the earlier proceeding.

4. The focus of section 3662 is change in the nature of the actual postal service being provided.

The Complaint appears to assert that section 3662 exists for the purpose of examining whether any recent deviation in the method of implementing the service changes implied by the previously-reviewed Docket No. N89-1 realignment plan has caused the establishment of a service standard for any origin-destination pair that results in the provision of service not conforming to the policies of the Act. The Postal Service respectfully submits that section 3662 does not authorize the Commission to conduct a *post mortem* examination for such purposes. The Postal Service questions how the Commission could examine the thousands of service standard changes at issue and reconstruct them to determine which parts of the implementation process deviated from original expectations, and then determine whether any such deviation "ensured" that any particular change in the service standard for any particular origin-destination pair did not conform to a particular policy of the Act. That is what the Commission is being called upon to do here. And that is why the Commission should agree that the Complaint seeks to unreasonably stretch the scope of its section 3662 jurisdiction and authority.

The purpose of section 3662 is not to give the Commission perpetual section 3661(c) oversight. Instead, in the context of the Complaint here, section 3662 allows the Commission to evaluate whether to conduct hearings to determine if, on at least a substantially nationwide basis, the mail service resulting from the finalization of Phase 2 service standard changes conforms to the policies of the Act. This reading of section 3662 appears to be reinforced by PRC Order No. 1307 (March 20, 2001). In reviewing the relationship between sections 3661 and 3662 in Docket No. C2001-1, the Commission examined section 3661 and opined that the first question to be resolved is



whether the change in question “involve[s] a change to the nature of a postal service . . . .” PRC Order No. 1307 at 10. In that proceeding, the matters at issue were changes to Sunday, holiday, and holiday eve pick-up of collection mail. The Commission opined that the elimination of collection and outgoing processing on Sundays constituted a change in the nature of postal services. *Id.*<sup>17</sup> The Postal Service focuses on this part of the Order here to emphasize what it seems to imply – that the results of postal management decision-making, the elimination of Sunday collection and processing of First-Class Mail – constituted the change in the nature of the postal service to be examined, not the decision-making process itself. Thus, when there is an examination of service standard changes under section 3662, irrespective of whether those changes were the subject of an earlier section 3661(c) proceeding, the proper subject of a section 3662 proceeding is the change in the nature of some postal service resulting from the decision to change service standards, not a day-by-day, month-by-month, ZIP Code-by-ZIP Code “whodunit” review of the manner in which the process of changing specific 3-digit ZIP Code area origin-destination pair service standards was administered or executed. Accordingly, to the extent that the focus of the Complaint deviates from the question of whether, on at least a substantially nationwide basis, the service resulting from the completion of Phase 2 of the realignment plan conforms to the policies of the Act, the Complaint should be summarily dismissed.

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<sup>17</sup> Docket No. C2001-1 presently continues for the purpose of resolving whether the changes in holiday eve service rise to the level of a change in the nature of postal services on a substantially nationwide basis.

### III. The Recent Changes In First-Class Mail Service Standards Do Not Warrant Review Under Section 3662

The Commission's regulations implementing section 3662 are published at 39 C.F.R. §§ 3001.81 through 3001.87. Section 3001.82 (hereinafter, Rule 82) states that:

The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question . . . with regard to an individualized, localized or temporary service issue shall generally not be considered as properly raising a matter of policy to be considered by the Commission.

The Postal Service interprets ¶40 of the Complaint as alleging that all or some of the recently finalized Phase 2 service standard changes "may be arbitrary." Further, the Postal Service interprets ¶¶21 and 41-48, 54-56, and 62-64 as alleging that the service standard changes result in service that is "unduly or unreasonably discriminatory," within the meaning of section 403(c). Finally, the Postal Service interprets ¶¶20 and 22-32, 35, 39 and 63 of the Complaint as alleging that some revised service standards result in service between certain 3-digit ZIP Code area origin-destination pairs that is not "adequate," within the meaning of either section 403(a) or 3661(a). Below, the Postal Service will explain why these aspects of the Complaint also should be dismissed.

#### A. Whether Or Not The Changes Are Substantially Nationwide, All Suggestions Of Arbitrariness Are Thoroughly Refuted

The Postal Service interprets ¶¶49-53, 57, and 62-63 of the Complaint as alleging that the Phase 2 service standard changes were either nationwide or substantially nationwide in scope. The Postal Service regards these changes as nothing more than a part of the realignment plan that the Commission, in Docket No. N89-1, deemed to be nationwide in scope. See PRC Op. N89-1 at 2,3. For purposes of argument in the instant proceeding, the Postal Service does not dispute the inference

that the recently implemented portion of the Docket No. N89-1 plan may itself be regarded as at least substantially nationwide in scope, within the meaning of 39 C.F.R. § 3001.82.<sup>18</sup> However, that the Phase 2 changes may be regarded as at least a substantially nationwide in scope does not mean that every complaint pertaining to their implementation raises an issue within the scope of the Commission's section 3662 jurisdiction. See Docket No. C99-3, PRC Order No. 1254 at 9-10 (June 15, 1999).

In any event, the Commission has indicated that the absence of "substantially nationwide" impact, by itself, is not dispositive on the issue of whether a complaint invoking § 3662 should be dismissed. In response to complaints which question whether a postal operating procedure or practice (otherwise lacking substantially nationwide implications) or the actual service provided to a mailer conforms with the policies of the Postal Reorganization Act, the Commission has stated that its policy is to hold hearings only when the surrounding circumstances raise the question of whether the Postal Service policy or action was unduly discriminatory, or otherwise arbitrary, capricious or unreasonable. See, Docket No. C84-3, PRC Order No. 580 at 4-5 (September 24, 1984); Docket No. C84-2, PRC Order No. 540 at 5 (December 6, 1983); Docket No. C83-2, PRC Order No. 524 at 10. (September 2, 1983).

Paragraph 40 of the Complaint alleges that "[t]he changes in some First-Class Mail service standards that the Postal Service implemented in 2000 and 2001 may be arbitrary." The Postal Service submits that the surrounding circumstances make it abundantly clear that the service standard changes complained about here are not arbitrary. The recently completed First-Class Mail service standard realignment plan was not the result of a whim or caprice. Nor was it the product of random or

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<sup>18</sup> However, the Postal Service steadfastly disputes any suggestion that the recent changes represent a separate plan that warrants separate review under section 3661.

unprincipled decision-making. The Commission need only review the Docket No. N89-1 record and the Gannon Declaration to affirm this conclusion.

The implementation of service standard changes for particular 3-digit ZIP Code origin-destination pairs, especially when those changes are consistent with a realignment plan already reviewed by the Commission under section 3661(c), is clearly an operational matter within the exclusive jurisdiction of Postal Service. In such circumstances, the Commission has indicated that, at most, it may assert jurisdiction to consider complaints under section 3662 "if circumstances indicate that a particular Postal Service operational policy is arbitrarily discriminatory on its face or implemented in an arbitrarily discriminatory manner." *Id.* at 10. The Postal Service considers that the same analysis applied by the Commission to the USPS Boundary Review Process in Docket No. C99-3 should be applied to the implementation of service standard changes for specific 3-digit ZIP Code pairs at issue in the instant proceeding.

The process of determining which origin-destination pairs will be subject to a 1-day, 2-day, or 3-day service standards is a process which inherently involves some degree of discrimination among the current 849,106 3-digit ZIP Code area origin-destination pairs. Complainant obviously prefers that particular SCF origin-destination pairs be 1-day vs. 2-day or 2-day vs. 3-day, or maybe even 1-day vs. 3-day. Complainant apparently also wishes that a different process for making service standard changes had been employed by the Postal Service. However, the Postal Reorganization Act vests the authority to make service standard change determinations with postal management. To whatever degree one may disagree with any or some of the Phase 2 First-Class Mail 2-day and 3-day service standard changes implemented by the Postal Service, it cannot be said that the changes, either as a whole or

individually, are arbitrarily discriminatory on their face.<sup>19</sup> Their genesis in Docket No. N89-1 is indisputable and their basis is thoroughly explained on the record in that case. The finalization of Phase 2 described in the Gannon Declaration is based upon a systematic review of postal operations, contrary to any suggestion that this aspect of the process may have been arbitrary.

B. The Various Specific Elements Of The Complaint Are "Individualized" or "Localized" In Nature

Moving beyond the question of arbitrariness, the Commission must analyze the specific allegations in the Complaint for what they are. In the Postal Service's view, that analysis should lead to the conclusion that almost all of the allegations do not raise issues on a nationwide or substantially nationwide basis. In some instances, the allegations pertain to Complainant's personal postal experience. See Complaint at 63 and 64.<sup>20</sup> In another instance, the Complaint alludes to a single, unidentified "major bank." Complaint at 25. With all due respect, the Postal Service considers that the Commission should conclude that these allegations are, at most, "individualized" within the meaning of Rule 82, and that they do not merit consideration under section 3662.

In ¶23, the Complaint notes that the recent service standard changes from 2-day to 3-day First-Class Mail service include mail between points of origin generally in the

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<sup>19</sup> Ironically, if anything, the current 2-day service standard definition supersedes a definition that some might have considered arbitrary by virtue of its emphasis on the 600-mile radius as a general boundary limit. In contrast, the new definition permits a more flexible examination of what may be within reasonable reach of an origin SCF by surface transportation.

<sup>20</sup> The Complaint provides no basis for the assertions here that "many" or any other postal customers consider themselves adversely affected by the recent finalization of Phase 2. The Commission has previously held that bare allegations of deficient mail services with respect to other parties, putatively similarly situated, are not sufficient to warrant the institution of formal hearings. Order No. 435 at 4 (June 11, 1982).

San Francisco Bay Area<sup>21</sup> and five other Western cities (San Diego 921, Seattle 981, Phoenix 850, Portland 972 and Las Vegas 891). This paragraph also notes the same service standard change for First-Class Mail between Reno 895 and Las Vegas 891.

The Postal Service observes that this portion of the Complaint is concerned with a total of 15 3-digit ZIP Code area origin-destination pairs among the over 91,000 3-digit ZIP Code area pair combinations in those five States and the nearly 850,000 possible pairs nationwide. The overwhelming focus of this aspect of the Complaint is mail between the San Francisco Bay area and five Western cities. Almost as an aside, it also refers to service between two cities in Nevada.

Not to diminish the significance of these or any other 15 3-digit ZIP Code area origin-destination pairs, but the Postal Service considers that this portion of the Complaint does not raise a matter of policy on either a nationwide or substantially nationwide basis, within the meaning of section 3662. This aspect of the Complaint is, at most, "localized," within the meaning of Rule 82. Accordingly, it should be dismissed.

Paragraphs 27 and 28 of the Complaint claim that the service standard for some intra-state First-Class Mail within California, Nevada, Texas, Wyoming and Alaska has switched from 2-day to 3-day service, resulting in a 3-day service standard for some intra-state mail to and from addresses in the State capitals of Nevada and Alaska.<sup>22</sup> A more accurate description of the service standards changes is provided in the Gannon Declaration at ¶¶32-33. With all due respect, the Postal Service considers that the allegations in paragraph 27 and 28 also do not rise to the level of a substantially nationwide service issue. They are, at best, "localized" in nature, within the meaning of

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<sup>21</sup> Identified by the following 3-digit ZIP Code areas: San Francisco 941, Oakland 946, North Bay 949 and San Jose 951.

<sup>22</sup> As emphasized in the Gannon Declaration at ¶20, the Complaint fails to acknowledge that there were 22,253 more ZIP Code pairs upgraded from 3-day to 2-day First-Class Mail service than there were downgraded from 3-day to 2-day service.

Rule 82, affecting only isolated portions of the intra-state First-Class Mail stream for the separate States in question. On this basis, these specific allegations do not merit consideration under section 3662. See, PRC Order No. 1280, at 7-8 (January 21, 2000); PRC Order No. 1227 at 5, 7-8 (January 27, 1999); PRC Order No. 1073 at 4 (August 17, 1995); PRC Order No. 580 at 3-5 (September 24, 1984); PRC Order no. 435 at 3-4 (June 11, 1982).

Paragraphs 29 and 30 of the Complaint criticize the change in the First-Class Mail service standard from 2 days to 3 days between Ashland, Oregon, and Yreka, California, particularly when that service standard is compared to the 1-day service standard for First-Class Mail from Yreka to Ashford. In ¶¶30, the Complaint alleges that change from 2-day to 3-day in the service standard for First-Class Mail between the Sectional Center Facility (SCF) service area in Eureka, California (ZIP 955) and two SCF areas in Oregon -- Eugene 974 and Medford 975 -- also merit review under section 3662.<sup>23</sup> The basis for these arrangements is explained in the Gannon Declaration at ¶¶34-36. The absence of reciprocity between Yreka and Ashford is explained by the fact that the recently completed changes were limited to consideration of whether to switch any existing 2-day commitments to 3-day and *vice versa*. The issue of whether to change the 1-day service standard from Yreka to Ashford is a

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<sup>23</sup> Paragraph 31 of the Complaint asserts that the recently implemented service standard changes "created multiple examples of three-day service standards for First-Class Mail traveling between adjacent SCF's." However, by its very nature, any such circumstance is a "localized" result of applying national policy, as was the case in Docket No. C99-3 and PRC Order No. 1254. Under such circumstances, the Postal Service considers that such localized service matters as not raising issues within the scope of the Commission's section 3662 jurisdiction. In discussing the specific situations described in the Complaint at ¶¶29 and 30, the Gannon Declaration (¶¶34-36) makes clear why the service standard for these specific origin-destination pairs are result in adequate service and are neither arbitrary nor unduly or unreasonably discriminatory.

matter for another day.<sup>24</sup>

The Postal Service submits that these allegations are not substantially nationwide in character, but are "localized" service issues, within the meaning of Rule 82. Accordingly, the Commission should decline to assert jurisdiction to hear the complaint under section 3662, insofar as it raises issues about adjacent California-Oregon 3-digit ZIP Code areas.

C. There Is No Basis For Concluding That The Changes Result In Undue Or Unreasonable Discrimination

At paragraph 41, the Complaint alleges that "[t]he criteria and process . . . employed to change First-Class Mail service standards in 2000 and 2001 do not ensure that the revised standards will not unduly or unreasonably discriminate against users of the mail located in California and other Western States . . . ."<sup>25</sup> In other words, Complainant concedes that there is some degree to which California and other Western States can legitimately experience an unequal or disparate impact as a result of the recently implemented changes, as long as that discrimination or impact is not undue or unreasonable in degree.

Viewed one way, the Complaint can be interpreted as asserting that the service standard guidelines submitted for review in Docket No. N89-1 and utilized ever since (particularly for the recently implemented changes) should have been different --

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<sup>24</sup> As is made clear in the materials included in Library Reference DFC-1, reconsideration of existing 1-day First-Class Mail service standards has been held in abeyance, pending completion of the changes at issue in this proceeding. In any event, review and change of this particular localized origin-destination pair to achieve reciprocity (for instance, to make it 3-day each way) could be accomplished unilaterally by the Postal Service (Gannon Declaration at ¶¶28-29) in a manner consistent with the criteria identified on page 41 of the Commission's Docket N89-1 advisory opinion.

<sup>25</sup> For purposes of interpreting this portion of the Complaint, the Postal Service interprets "Western states" to include those States specifically referenced in the Complaint, as well as those continental States, any portion of which lies west of El Paso.



perhaps there should have been one set of guidelines for establishing service standards in California and other Western States and another set of guidelines for establishing service standards for the remainder of the nation. Conversely, the Complaint could be interpreted as alleging that a failure to utilize a different set of guidelines in 2000 and 2001 for the 2-day and 3-day changes in California and the other Western States has resulted in undue and unreasonable discrimination.

Postal Service management is vested with the responsibility of providing, planning, and developing a prompt, adequate, reliable, efficient, economical system of collecting, sorting, and delivery of mail to both urban and rural communities. See, *generally*, 39 U.S.C. §§101 and 403. The determination of whether to establish separate service standard guidelines for different States, regions, postal administrative areas, or time zones is a matter reserved to postal management, subject to the general policies of the Postal Reorganization Act. There is no statutory policy that either requires or forbids the establishment of service standard guidelines based on any prescribed geographical, political, postal administrative boundaries, or time zones. Thus, putting aside the implications of section 3661 for the moment, existing service standards -- which are based on postal administrative 3-digit ZIP Code areas -- instead, could be established by the Postal Service strictly on the basis of State or other political boundaries, geographic regions, or time zones. *Whatever criteria would be used in such instances, each system would likely result in apparently disparate treatment among putatively similarly situated postal customers and would have to satisfy the policies of the Act.*

Taking into account considerations of reasonable reach of available surface transportation, as well as availability of reliable air transportation for more distant origin-destination 3-digit ZIP Code area pairs with significant trade relations, in the context of more disciplined mail processing and dispatch, the Postal Service has established the

2-day First-Class Mail service standard at issue in this proceeding. This service standard is not determined strictly by political borders. For instance, the 2-day service standard is generally expected to include all 3-digit ZIP Code areas within reasonable reach of surface transportation, irrespective of whether those destination 3-digit ZIP Code areas are in the same State as the origin area or in nearby States.<sup>26</sup> On its face, there is nothing inherently discriminatory about this service standard. It does not single out postal customers in 3-digit ZIP Code areas in California or other Western States for treatment any different than that received by customers in 3-digit ZIP Code areas in other States or areas of the country. The 2-day service standard is applied nationwide.<sup>27</sup> Since no distinction is made on the basis of a 3-digit ZIP Code area's State of origin or destination, there is no basis for alleging that the service standards -- on their face -- either are designed to or do discriminate against Californians, Westerners, or anyone else.

Paragraph 41 of the Complaint alleges that the shift by the Postal Service of more 2-day service standard First-Class Mail from air to surface transportation unduly and unreasonably discriminates against California and Western mail users. But, the shifts from 2-day to 3-day service complained about (and the even more numerous shifts from 3-day to 2-day service not mentioned) can be expected to have a higher degree of impact on Western or any other States where there had previously been a higher reliance on air transportation to attempt to achieve 2-day service. This result

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<sup>26</sup> Plus, other 3-digit areas outside the reasonable reach of surface transportation if dependable and timely air transportation is available.

<sup>27</sup> The fact that 3-digit ZIP Code areas in nearby states may be harder to reach from a particular area of origin in the West has more to do with simple fact that most Western States are significantly larger than most Eastern States. One consequence is that much inter-state mail in the East often travels shorter distances than much intra-state mail in the West.

would be consistent with the explicit objectives of the realignment plan to shift to more reliance on surface transportation to meet 2-day service standards, as explained by witnesses and Potter and Shipman in Docket No. N89-1. See *a/so*, Gannon Declaration at ¶¶15, 16, 18 and 27.

To the extent that the result is more shifting of Western origin-destination First-Class Mail from 2-day to 3-day service, the basis for the impact is simple and rational. There are greater distances to cover between 3-digit ZIP Code areas in states that are generally larger than others, in states in which population centers are relatively farther apart than in other parts of the country, and in states with a preponderance of relatively large, sparsely populated 3-digit ZIP Code areas. There is also the inescapable fact that the continental 48 states are spread so far apart from West to East as to cover four different time zones. This factor generally limits the West-to-East transportation window, relative to transportation moving in the opposite direction. The Postal Service has developed a network of hundreds of originating and destinating concentration points through which it routes mail in an effort to provide timely and consistent service. These variables complicate the integration of mail processing, transportation, and dispatch operations. As a result, postal managers have to meet different types and degrees of logistical challenges in different parts of the country that have nothing to do with inter-state borders. See Gannon Declaration at ¶31.<sup>28</sup> The Postal Service takes the nation's dynamic sociological-economical-geographical-political matrix as a given, and is responsible for establishing and adjusting its operations to serve the mailing public in

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<sup>28</sup> Thus, the logistics involved in processing and transportation of First-Class Mail between the adjacent states of Pennsylvania and New Jersey, for instance, will only generally resemble those involved in processing and transportation of similar mail between the adjacent states of California and Nevada. The necessary differences in operations and service standards do not provide a basis for concluding that the Postal Service is discriminating at all (much less, unduly or unreasonably) against patrons in one region or the other.

a manner consistent with the broad latitude it is given by the Postal Reorganization Act. The service standard changes at issue in this proceeding have been established in accordance with this authority.

Although the Complaint repeatedly alludes to the guidelines for determining when to establish 2-day First-Class Mail service standards that emerged from Docket No. N89-1, it fails to acknowledge a significant change that occurred when those guidelines were adopted. When one compares the pre-1990 definition of the 2-day standard to the current one, what clearly emerges is the shift away from the relatively rigid “600-mile-by-surface” definition to one that is not fixated on a specific mile limit. The current 2-day standard definition allows more flexibility, based upon the reasonable reach of surface transportation to intra- and nearby-state 3-digit ZIP Code areas. The Act neither requires nor prohibits a rigidly uniform “all 600-mile mail is 2-day” standard. It certainly does not proscribe the more flexible, now-decade-old 2-day standard definition.

Those who consider that they have a basis for criticizing the timing of the finalization of the recent 2-day service standard changes, nevertheless, have no basis for criticizing those changes as being inconsistent with the guidelines and definitions that emerged from Docket No. N89-1. The advisory opinion in that case did not conclude that the then, newly proposed, more flexible 2-day First-Class Mail service standard was unduly or unreasonably discriminatory.<sup>29</sup> Even if the finalization of the implementation of that standard in 2000 and 2001 results in more intra-state 2-day commitments shifting to 3-day in a particular State, such a result -- which came into the realm of possibility when the current service standard definitions were adopted a decade ago -- is not now unduly or unreasonably discriminatory.

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<sup>29</sup> Or arbitrary, for that matter.

In no uncertain terms, Complainant is asking the Commission to review each specific 3-digit ZIP Code area origin-destination pair that has recently been assigned a 3-day service standard for the purpose of evaluating, on a case-by-case basis, whether any of those pairs might be suffering from undue or unreasonable discrimination.

At ¶35, the Complaint alludes to the shift toward more reliance on surface transportation to achieve 2-day service and the result that some former 2-day 3-digit ZIP Code area origin-destination pairs now have a 3-day service standard. The Complaint identifies the origin-destination pairs listed in ¶23 of the Complaint as among the affected 3-digit areas. The Postal Service regards the instances described in ¶23 as raising nothing more than “localized” issues within the meaning of Rule 82, and therefore, they are not properly the subject of a complaint proceeding under section 3662. If the Commission interprets this portion of the Complaint as alleging other than “localized” changes, the Commission need look no farther than ¶31 of the Gannon Declaration for the very reasonable and rational basis for the changes. This refutes any assertion that the changes are unduly or unreasonably discriminatory in any fashion.<sup>30</sup>

Based on ¶35 of the Complaint, it appears to be Complainant’s view that if, in his or the Commission’s judgment, an available air route is sufficiently reliable to warrant the establishment of an air route contract between the Postal Service and a particular air service provider between two particular 3-digit areas otherwise deemed to be beyond the reasonable reach of surface transportation, then a contrary determination by the Postal Service violates the policies of the Postal Reorganization Act.

Viewed another way, the Complaint asserts that if he or the Commission should prefer air transportation for effecting 2-day First-Class Mail service between a particular 3-digit ZIP Code area origin-destination pair, then the Act requires that it must be used,

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<sup>30</sup> For the same reasons, the changes do not result in “inadequate” service within the meaning of sections 403(a) and 3661(a).

if it can be demonstrated that there is a less reliable air route being used for the transportation of mail between another 3-digit ZIP Code origin-destination pair with a 2-day service commitment somewhere in the continental United States. For example, assume the Postal Service switches to surface transportation to effect 3-day service between one of the 849,106 3-digit ZIP Code pairs when there is air service with only a 60 percent on-time performance record available to try to maintain 2-day service. According to Complainant's logic, the resulting switch to 3-day service would be either "arbitrary" or "unduly or unreasonably discriminatory" or "inadequate," if there were an air route with a 59 percent on-time performance record used somewhere in the continental United States to affect 2-day First-Class Mail service for any of the other remaining 849,105 3-digit ZIP Code origin-destination pairs. And, the Commission should conduct hearings to evaluate the situation and render an opinion.

Make no mistake about it. The implications of the Complaint would have the Commission step into the shoes of postal transportation managers and, on a localized, "truck vs. plane" basis, second-guess literally hundreds of thousands of decisions for the purpose of determining which ones fail to result in the provision of First-Class Mail service consistent with the various policies of the Act. The Postal Service believes that it would be ill-advised and inappropriate for the Commission to take steps in the direction of such an expansive reading of its section 3662 jurisdiction.

With all due respect, the Postal Service considers that the only potentially cognizable question that the Complaint has put before the Commission for consideration in the instant docket on the "truck vs. plane" issue is whether the 2-day service standard adopted after review by the Commission in Docket No. N89-1 is unduly or unreasonably discriminatory on its face.<sup>31</sup> The fact that the Commission

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<sup>31</sup> Or arbitrary or otherwise contrary to some policy of the Act.

offered no such adverse opinion in Docket No. N89-1 would seem to speak volumes on that issue.

Section 403(c) cannot reasonably be read to require that all intra-state First-Class Mail to and from all addresses in all State capitals must have no more than a 2-day service standard. It cannot reasonably be interpreted to require that all adjacent SCFs have no more than a 2-day First-Class Mail service standard. Nor can it be read to require that all intra-state First-Class Mail have no more than a 2-day service standard. It also cannot be read to require the use of a particular mode of transportation between particular 3-digit ZIP Code areas. Accordingly, the Commission should decline to hear the Complaint, insofar as it alleges violations of section 403(c).

D. None Of The Allegations Regarding Adequacy Of Service Merit  
Consideration By The Commission

The Postal Service interprets a number of paragraphs in the Complaint as making factual and other allegations to the effect that the recently finalized service standard changes result in First-Class Mail service that is not "adequate" within the meaning of either section 403(a) or 3661(a). For the reason explained below, these allegations also should be summarily dismissed.

Taking into account its general responsibilities under the Postal Reorganization Act and based upon the manner in which it has organized its mail processing, dispatch, transportation, and delivery operations nationwide, the Postal Service has established First-Class Mail service standards that are generally designed to provide delivery to a destination address either overnight, in two days, or in three days of postmark, assuming the scheduled delivery day is not a Sunday or holiday.

Whether a particular 3-digit ZIP Code area origin-destination pair not eligible for overnight service is scheduled for 2-day service generally depends upon the factors that have been discussed above. Is the destinating 3-digit ZIP Code area either in the

home State or a nearby State? Even if so, is it within reasonable reach of available surface transportation (within a 12-hour drive)? If both questions are answered affirmatively, the destinating zone is a candidate for 2-day service. If not, it becomes a candidate for 3-day service, unless a compelling business/volume reason exists for utilizing available and sufficiently dependable and timely transportation to effect consistent 2-day service. See, PRC Op. N89-1, at 5. The judgment calls that are made by postal officials in applying the service standard criteria will always be subject to second-guessing by some postal patrons who are slated for 3-day service, particularly if those patrons prefer -- or even express a "need" for -- 2-day service between particular origins and destinations. Customer preference in particular instances can be a persuasive factor, but must always be balanced against other compelling operational, logistical, and efficiency considerations.<sup>32</sup>

In finalizing the Phase 2 service standards, the Postal Service made over 49,000 3-digit ZIP Code area origin-destination pair upgrades from 3-day to 2-day service and just over 27,000 downgrades from 2-day to 3-day service. This represents a net increase of 2.6 percent in the number of origin-destination pairs scheduled for 2-day service and a slight net increase (0.6 percent) in the number of possible business and residential deliveries scheduled for 2-day service. Gannon Declaration at ¶20.

The fact that the recently finalized service standard criteria may have been applied to downgrade the service for a particular 3-digit ZIP Code origin-destination pair from 2-day to 3-day service does not render the resulting service "inadequate." The Postal Reorganization Act gives postal management broad latitude to determine the speed with which it will strive to provide service for the various classes of mail, allowing for the balancing of such factors as promptness, reliability, and efficiency (section

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<sup>32</sup> The circle of people who envy the postal managers responsible for making these decisions is as small as they get.



101(a)); effectiveness and regularity (section 101(b)); expedition (section 101(e)); and economy (section 101(f)).

The current service standards were reviewed by the Commission in Docket No. N89-1. There was no suggestion in its advisory opinion in that case that the standards did not satisfy the requirements of the Act. On the question of "adequacy" of mail service, within the meaning of sections 403(a) and 3661(a), the instant Complaint fails to make allegations of the type for which the Commission generally reserves its jurisdiction under section 3662.

Concentrating generally again on mail service between the San Francisco Bay Area and five other Western cities (San Diego, Seattle, Phoenix, Portland, and Las Vegas),<sup>33</sup> ¶23 of the Complaint observes that the recent finalization of Phase 2 of the realignment plan results in these origin-destination pairs having 3-day service standards commitments, where 2-day service standards had formerly been in effect. Apparently in a vein effort to give weight to the allegation that these new service standards result in "inadequate" service," ¶¶24-26 allege that:

a "substantial" volume of remittance mail travels from California to Arizona and Las Vegas;

"at least one major California bank" services customers by mail from operations centers in Arizona and Oregon; and

Postal Service Docket No. N89-1 market research indicated that "postal customers need two-day First-Class Mail service from Seattle to San Francisco."

With respect to the 15 origin-destination pairs associated with the mail flowing between the Bay Area and the five other cities, plus the mail between Las Vegas and Reno, the Complaint, again, simply fails to raise an issue on at least a substantially nationwide basis, within the meaning of section 3662. The issue is clearly a "localized"

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<sup>33</sup> Plus mail between Las Vegas and Reno.

one, within the meaning of Rule 82. Accordingly, on that basis, this portion of the Complaint should be dismissed.

The fact that there may be remittance mail going from California to Arizona and Las Vegas is immaterial to whether the Commission should assert jurisdiction. The service standards at issue here apply equally to all First-Class Mail pieces, regardless of content. The fact that at least one "major California bank" may be sending mail from Arizona and Oregon is equally immaterial. Neither the provision of postal services nor the application of section 3662 jurisdiction is based on whether a particular postal customer operates as a bank. The Postal Service values the concerns of each of its customers. However, mail sent by a bank from Oregon and Arizona would seem, at most, to raise either "individualized" or "localized" concerns, within the meaning of Rule 82. Again, however valuable a postal customer such a bank may be, the Complaint offers no basis for concluding that the bank's mailing practices raise issues of at least a substantially national basis regarding Postal Service compliance with the policies of the Postal Reorganization Act, within the meaning of section 3662.

With respect to the desire of Seattle postal patrons that the Postal Service retain a 2-day service standard for mail to and from San Francisco, the Complaint apparently seeks section 3662 review of a purely "localized" service issue, contrary to the Commission's long-standing policy of not asserting jurisdiction to hear such complaints.

Next, ¶¶27 and 28 of the Complaint point to the fact that the recently finalized Phase 2 service standard changes result in some intra-state First-Class Mail now being subject to a 3-day service commitment in California, Nevada, Texas, Wyoming, Alaska (including intra-state mail to and from the State capitals of Nevada and Alaska).

As explained above in section III.C., all other things equal, a large, relatively sparsely populated state with remotely located population centers and mail processing plants serving large geographical areas is more likely to have some 3-day intra-state

service standards than small, relatively more densely populated states with population centers and mail processing plants relatively close to each other. Service standards for intra-state 3-digit ZIP Code areas can differ from state to state for the simple reason that Alaska is not like Rhode Island and Nevada is not like Georgia. Different mail flows and densities, mail processing economies and transportation options, and distances involved dictate different mail processing and logistical realities for different 3-digit ZIP Code areas origins and destinations.<sup>34</sup>

In paragraph 29, the Complaint identifies adjacent 3-digit ZIP Code areas in California and Oregon and criticizes the establishment of a 3-day service standard one-way and an overnight standard the other way for two cities only 33 miles apart. However, as explained in ¶¶34-36 of the Gannon Declaration, the 3-day service standard makes sense in light of all relevant considerations and the 1-day reciprocal standard will be reviewed when a self-imposed moratorium on consideration of overnight service standard change requests is lifted. In any event, both are “localized” matters within the meaning of Rule 82, and neither raises an issue substantially nationwide in scope as to merit the assertion of section 3662 jurisdiction for a hearing by the Commission.<sup>35</sup>

In ¶31, the Complaint asserts that the recently finalized Phase 2 service standard changes “created multiple examples of three-day service standards for First-Class Mail traveling between adjacent SCF’s.” The fact that a pair of 3-digit ZIP Code

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<sup>34</sup> Similarly, while all residential postal customers are equal in the eyes of the Postal Service, the inescapable fact is that someone’s house is at the beginning of each carrier’s route and someone else’s house is at the end. Someone gets served first, and someone else gets served last. All other things equal, many would still regard the first house as the recipient of better service than the last house.

<sup>35</sup> The same conclusion should be reached regarding the allegations in ¶30 of the Complaint.

areas may be adjacent says nothing about the location of the principal mail processing facility within each area, the distance between those facilities, the volume of mail that flows between them, the availability of surface transportation between those plants, considerations of economy and efficiency, or whether the postal processing and transportation network masses mail from each of those facilities at other, larger plants for processing, cross-docking, and transport to the respective destinating facilities.<sup>36</sup>

Considerations listed above can dictate that mail destinating for an address in an adjacent 3-digit ZIP Code area will travel a seemingly circuitous route across state lines and through several mail processing plants, and by air and/or truck over several days in order for the Postal Service to deliver it in an economical manner. Gannon Declaration at ¶¶30, 34-35. The Postal Service is not required to ensure that mail travels in a straight line from origin to destination.

In any event, the complexity of the postal mail processing and transportation network guarantees that, in the absence of extraordinarily costly counter-measures, there always will be some outliers: adjacent 3-digit ZIP Code areas with 3-day service standards based on very indirect mail flow lines of travel. The number of such cases actually was reduced by 46 percent as a result of the finalization of the Phase 2 service standard changes. Gannon Declaration at ¶29.

A postal system that required all intra-state mail, or all mail between all adjacent SCFs, or all intra-state mail to and from a state capital to be delivered within two days – irrespective of mail volume between the origin and destination, or perceptions or customer need, or desire for consistency in delivery times, or without regard to the

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<sup>36</sup> Likewise, the letter one mails to a next-door neighbor will be taken by one's carrier to a station or post office in town, from which it is taken to a mail processing plant across the county, where it is processed and returned to the carrier station for delivery the next day, in what seems like a circuitous journey for a letter whose destination is less than 100 feet from its origin.

relative availability and reliability of surface and air transportation to meet reasonable expectations, could result in extraordinary mail processing and transportation arrangements. It is likely that there is no system that would be established to the complete satisfaction of all postal customers and stakeholders.

The Postal Service continues to abide by the policy of maintaining a uniform set of criteria for establishing First-Class Mail service standards, based upon 3-digit ZIP Code areas. The existing set of First-Class Mail service standards reflects postal management's objectives for delivery of mail among the current 849,106 pairs of 3-digit ZIP Code area combinations. Current postal mail processing operations and transportation arrangements are planned with the goal of meeting the service standards that have emerged from the realignment plan submitted for review in Docket No. N89-1 and recently finalized.

The Complainant obviously prefers that mail processing and transportation be organized around service standards designed to ensure that all intra-state mail or all intra-state mail to or from an address in a state capital address is delivered in no more than two days. Anything short of that is regarded by the Complainant as inadequate. The Complainant also considers a 3-day service standard for mail originating and destinating in adjacent SCFs to be inadequate, *per se*. Complainant also would prefer that certain Western 3-digit ZIP Code area pairs with 3-day service standards have 2-day service standards. He appears to take the view that if there is air service available to fly mail between two points to achieve a 2-day service standard, then it should be flown between those points, and a 2-day service standard should be established, without regard to such factors as the judgment of postal transportation experts regarding the reliability and consistency of that air service relative to surface transportation alternatives, and associated costs.

The Complaint ignores the realities of operating a national postal system in an area as geographically widespread and diverse as the continental United States. The Gannon Declaration establishes a clear basis for concluding that the service provided is "adequate," within the meaning of section 3661(a). In each case, the switch to a 3-day service standard conforms to the criteria for distinguishing 2-day and 3-day service which were reviewed in Docket No. N89-1. Contrary to the implication of ¶26 of the Complaint, those criteria do not require that expressions of customer need for 2-day service trump all other considerations, only that customer need be considered, if not otherwise trumped by a determination to rely on more consistently reliable surface transportation.

As indicated in the Gannon Declaration at ¶29, service standard review is an ongoing responsibility. Such review is one of postal management's general responsibilities under the Postal Reorganization Act. It also is consistent with the Commission's Docket No. N89-1 advice that the Postal Service unilaterally review existing service standards and, on an "as and where needed" basis, make "adjustments at certain SCFs to correct specific anomalies, illogical service commitments, and inefficient service requirements" and make other limited changes to meet local conditions . . . ." PRC Op. N89-1 at 41.

Having belatedly completed the final chapter of its most comprehensive change to First-Class Mail service, the Postal Service will continue to monitor existing service standards. When it lifts the self-imposed moratorium made necessary by its focus on finalization of Phase 2 of the Docket No. N89-1 realignment plan, the Postal Service will review requests for changes to the First-Class Mail service standards among the numerous 3-digit ZIP Code areas on a case-by-case basis.

Meanwhile, the Commission must consider Complainant's request that it convene hearings under section 3662. What would the purpose of such a hearing be?

To provide a basis for the issuance of a public report about how long it took the Postal Service to complete implementation of the Docket No. N89-1 plan? That objective has been accomplished by this Motion and the Gannon Declaration.

A review of the current First-Class Mail service standards was conducted by the Commission in Docket No. N89-1. The Postal Service's implementation of Phase 2 of the realignment plan reviewed in that proceeding took longer to finalize than anyone could reasonably have anticipated. The Complaint makes numerous allegations that the recent finalization of the implementation of Phase 2 of the Docket No. N89-1 realignment plan produced 2-day and 3-day service standards that result in the provision of First-Class Mail service contrary to the policies of the Act, within the meaning of section 3662.


Factually, there is little dispute about what changes occurred, only a disagreement about whether the resulting service conforms to the policies of the Act. Accordingly, the Postal Service moves that the Commission summarily address the legal questions raised by the Complaint. The Postal Service considers that the Commission can be persuaded on the basis of this motion and responsive pleadings filed by the parties whether to assert jurisdiction under section 3662 in this matter. Upon consideration of such motions, the Commission should determine to dismiss the Complaint in its entirety.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

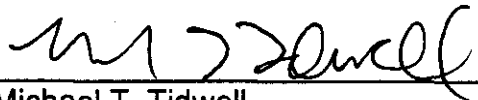
By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel  
Ratemaking

  
\_\_\_\_\_  
Michael T. Tidwell  
Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that, in accordance with section 12 of the Rules of Practice, I have this day served the foregoing document upon all parties of record in this proceeding.

  
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Michael T. Tidwell

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2998/ FAX: -5402  
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